

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

This *pro se* matter is before the Court upon Raul S. Zavala's "Motion to Alter or Amend May 10, 2012 Judgment Pursuant to Fed.R.Civ.P. Rule 59(e) (ECF No. 237-38)," filed on June 4, 2012 (ECF No. 239). Petitioner requests that the Court vacate the its May 10, 2012 judgment.¹ Mr. Zavala also requests that an oral argument be scheduled or "with by and through assistance of counsel." ECF no. 239 at 10. The Government did not file a Response.

II. DISCUSSION

Rule 59(e) of the Federal Rules of Civil Procedure provides that any "motion to alter or amend a judgment must be filed no later than 28 days after entry of the judgment." Fed.R.Civ.P. 59(e). A motion under Fed.R.Civ.P. 59(e) "should not be granted, absent highly unusual

¹Order Dismissing Motion to Vacate Judgment Pursuant to Rule 60, ECF No. 238.

1 circumstances, unless the district court is presented with newly discovered
 2 evidence, committed clear error, or if there is an intervening change in the
 3 controlling law." *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir.1999)).

4 Petitioner argues in his Rule 59(e) motion that there are (3) issues:

5 (1) "Whether the District Court Committed "Clear Error" in Construing
 6 Petitioner's F.R.Civ.P. Rule 60(b) and (d), Motion as Second or Successive
 7 Under *Gonzalez v. Crosby*, 545 U.S. 524, 532 (2005), And Title 28 U.S.C.
 §2244(b)(3)" ;

8 (2) "Whether the District Court Committed "Err" in "Assuming the Role
 9 of Trier of Fact" When Ruling in Petitioner's December 7, 2009, Habeas
 10 Proceeding and Then Relying on the December 7, 2009, Habeas's Defective
 Fact-Finding Process When Ruling in Petitioner's May 10, 2012, F.R.Civ.P.
 Rule 60(b); and Rule 60(d), Motion For relief From the December 7, 2009,
 Habeas Proceeding Judgment";

11 (3) "Whether the Court Erred by Failing to Construe Petitioner's Motion
 12 as a "True" Rule 60(b), and a "Mixed Motion" Requiring the District Court
 13 to Address All Issues Raised in the Rule 60(b) and Rule 60(d)
 Independently."

ECF No. 239 at 2.

14 One of the purposes of Rule 59(e) is to provide district courts the
 15 opportunity to correct significant errors of fact or law that are brought
 16 to their immediate attention, and thus spare the parties and appellate
 17 courts the burden of unnecessary appeals. See e.g. *Charles v. Daley*, 799
 18 F.2d 343, 348 (7th Cir.1986); *Steigerwald v. Bradley*, 229 F.Supp.2d 445, 447
 19 (D.MD.2002). A motion to alter or amend judgement under Rule 59(e) of the
 20 Federal Rules of Criminal Procedure is essentially a motion for
 21 reconsideration. Rule 59(e) offers an "extraordinary remedy, to be used
 22 sparingly in the interests of finality and conservation of judicial
 23 resources." *Kona Enter., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th
 24 Cir.2000). The Ninth Circuit has consistently held that a motion brought
 25 pursuant to Rule 59(e) should only be granted in "highly unusual
 26 circumstances." *Orange Street Partners v. Arnold*, 179 F.3d 656, 665 (9th

1 Cir.1999) (citing *School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th
 2 Cir.1993).

3 Once a decision of law is made, it becomes the "law of the case," and
 4 absent clear error or changed circumstances should not be changed. See
 5 *United States v. Estrada-Lucas*, 651 F.2d 1261, 1263-64 (9th Cir.1980). The
 6 law of the case doctrine provides that "a court is generally precluded from
 7 reconsidering an issue that has already been decided by the same court, or
 8 a higher court in the identical case." *United States v. Cuddy*, 147 F.3d
 9 1111, 1114 (9th Cir.1998), quoting *United States v. Alexander*, 106 F.3d 874,
 10 876 (9th Cir.1997) (internal quotation and citation omitted).

11 In the instant motion, Mr. Zavala argues that ". . . the District Court
 12 has never addressed whether any of the allegations raised in Petitioner's
 13 Title 28 U.S.C. 2255 can be attributed to any 'strategic reasons' of
 14 counsel's actions." Petitioner also argues that the Court did not address
 15 the allegation in his §2255 motion that counsel failed² to argue for a proper
 16 Terry stop or address the alleged conflict of interest. ECF No. 239 at 8.
 17 It appears that Petitioner is requesting reconsideration, in part, of the
 18 merits of his § 2255 Motion. As to these arguments, his Rule 59(e) motion
 19 to reconsider or amend judgment is construed as a second or successive
 20 federal habeas motion under 28 U.S.C. § 2255. *Gonzalez v. Crosby*, 545 U.S.
 21 524; 125 S.Ct. 2641, 2649 (2005). This Court, however, cannot consider such
 22
 23

24 ²The Court did address these specific issues in its Order Denying 28
 25 U.S.C. §2255, noting: Petitioner alleges many more deficiencies of his
 26 counsel, however, Petitioner fails to show that one or all of these
 errors had some conceivable effect on the outcome of the proceeding. ECF
 No. 225 at 10-11.

1 alleged claims without prior authorization of the Ninth Circuit Court of
2 Appeals.³

3 "To succeed [in a Rule 59(e) motion], a party must set forth facts
4 or law of a strongly convincing nature to induce the court to reverse its
5 prior decision." *U.S. v. Westlands Water Dist.*, 134 F.Supp.2d 1111, 1131
6 (E.D.Cal.2001). Petitioner sets forth no newly discovered evidence, does
7 not demonstrate any error, much less clear error, has been committed, nor
8 has an intervening change in the controlling law been demonstrated. In
9 other words, Petitioner provides no basis for the Court to re-open this
10 matter. Because none of the grounds for relief pursuant to Rule 59(e) is
11 present, it is concluded that Petitioner is not entitled to relief pursuant
12 to Rule 59(e). Accordingly,

13 **IT IS HEREBY ORDERED** that:

14 1. Petitioner's "Motion to Alter or Amend May 10, 2012 Judgment
15 Pursuant to Fed.R.Civ.P. Rule 59(e) (ECF No. 237-38)," **ECF No. 239**, is
16 **DENIED**.

17 2. To the extent Petitioner's motion seeks reconsideration, in part,
18 of the merits of his § 2255 Motion claims which were considered and
19 dismissed on December 7, 2009 (ECF No. 225), this Court cannot consider
20 such alleged claims without prior authorization of the Ninth Circuit Court
21 of Appeals. On June 15, 2011, the Ninth Circuit Court of Appeals denied
22 Mr. Zavala's request for certificate of appealability (ECF No. 235).

23
24 ³Rules Governing Sect. 2255 Proc. for the U.S. Dist. Ct., Rule 9
25 ("Before presenting a second or successive motion, the moving party must
26 obtain an order from the appropriate court of appeals authorizing the
district court to consider the motion, as required by 28 U.S.C. §
2244(b)(3) and (4)"); *United States v. Allen*, 157 F.3d 661, 664 (9th
Cir.1998).

3. Petitioner's request for an oral argument and to the extent his request involves appointment of counsel, is **DENIED** pursuant to Local Rule 7 and the Court's discretion.

4. The District Court Executive is directed to:

- (a) Enter this Order; and
- (b) Provide a copy to Petitioner.

DATED this 21st day of August, 2012.

s/Lonny R. Suko

LONNY R. SUKO
UNITED STATES DISTRICT JUDGE